Wake Forest Jurist

VOL. 1, NO. 1 SPRING, 1971

WAKE FOREST JURIST

Vol. 1, No. 1 Spring, 1971

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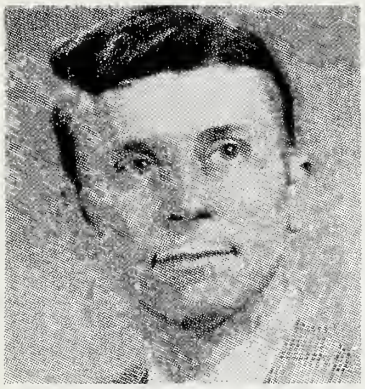

DEAN BOWMAN

On behalf of the School of Law, I am pleased to have this opportunity to extend our best wishes to all of our alumni in this, the first issue of the Wake Forest Jurist. We hope to make the Jurist a twice-a-year publication that will help to keep its readers informed about developments and newsworthy events within the School of Law and among our alumni. Indeed, the Jurist has had its inception in the idea than an informed and interested body of alumni is vital to the progress and continued success of our School. Although the Jurist as it now is conceived will provide a forum for legal writing by students, the overriding purpose of the Jurist is to provide a regular channel of communication between the School of Law and its alumni.

A significant development of this academic year has been the organization of a Law School Foundation. The purpose of the Foundation, which is chartered as a nonprofit corporation, is to assist the School of Law in obtaining gifts and grants for permanent endowment and for current expenses. The Foundation is off to a good start, having received a commitment for a grant of $100,000 to its permanent endowment fund from R. J. Reynolds Tobacco Company. We are grateful to R. J. Reynolds Tobacco Company for this splendid vote of confidence in the Law School. We are also grateful to Mr. Henry Ramm, former Vice President and General Counsel of R. J. Reynolds Tobacco Company, for his good offices in presenting our case to the Company.

We plan to use the income of the Foundation for such things as scholarships, additional books for the library, special lecturers, visiting professorships and faculty salary supplements and, in general, to help the cause of legal education at Wake Forest across a broad spectrum of programs within the Law School.

The Law School also has received this year a gift of $25,000 from the Mary Reynolds Babcock Foundation. This will be used in purchasing additional books for the law library. We have plans for a major expansion of the library's holdings so as to make the library a first-rate research library, as well as an excellent teaching library.

The enrollment of the Law School now stands at 243, an all-time high. Applications for the 1971 fall class are pouring in at an unprecedented rate. We have received almost seven applications for each available place in the entering class. Enrollment during the 1971-72 academic year probably will exceed 260. In view of this rising enrollment, the provision of some additional classroom and library space in the law building has become imperative. Accordingly, preliminary plans are being made for the construction of a modest addition which would provide a large classroom and an additional reading room for the library. The estimated cost of this addition is in the neighborhood of $200,000. How quickly we can proceed with the construction depends, of course, on how quickly the necessary funds can be obtained. A gift of $25,000 has been received from the United States Steel Corporation and has been earmarked for this contemplated construction, so we do have a running start toward reaching our goal.

During my first year here at Wake Forest, I have discovered that my initial impressions of the Law School were accurate: that it is an institution with great strengths and a tremendous future potential. Among its outstanding strengths I would include the capable and dedicated faculty that Dean Weathers has assembled over the years, an alert and vigorous student body and, last but certainly not least, its alumni. With these resources, and especially with the continuing interest and growing financial support of alumni and other friends, we look forward with confidence to an increasingly strong and vital program of legal education at Wake Forest during the 1970's.

Pasco M. Bowman

LAW SCHOOL NEWS IN BRIEF

AS A NEW ERA BEGINS

With the retirement of Dean Carroll W. Weathers, the Wake Forest Law School adds another great chapter to its enviable history. The accomplishments of Dean Weathers and his contributions to the school and legal profession are too numerous for delineation in this limited space. The Dean has already received many accolades for his achievements and will undoubtedly receive many more; however, no reward could be greater than the satisfaction that the students he paternally guided through the rigors of law school will always consider him the central influence in their legal careers.

One would expect that with the transition from Dean Weathers to Dean Bowman there would be the usual initial confusion of adjustment which occurs in most administrative changes. The law school can take pride in the fact that such has not been the case. Dean Bowman is young and innovative, but cautious. He personally notes the need to continue rational, productive development in the school which will meet the ever-changing demands of the legal profession. Consequently, with the advent of Pasco M. Bowman II, the Wake Forest Law School begins a new era of challenges which will be met with novel ideas governed by cautious consideration.

RECENT DEVELOPMENTS

LIBRARY EXPANSION

The law library continues to be adequate for the general needs of students and professors; however, the school is planning significant improvements which will substantially increase materials in specialized legal areas, regional reporters, periodicals, and texts. Guidelines established by the Association of American Law Schools recommend that the library have 60,000 volumes by January 1, 1975. In order to meet the guidelines, approximately 5,000 volumes per year will be added during 1971, 1972, 1973, and 1974. Selections will be based on a cross-check of present holdings against a model selection guideline established by law librarians for 60,000 volume collections. Some of the specialized legal areas to be expanded are corporate, labor, tax, and trade regulation. There will also be additional law reviews and duplications of often-used treatises and court reports. Expansion on this large scale will give the law school an excellent research library as well as an excellent teaching library.

FACULTY INCREASE

The budget for fall, 1971, has a provision for the addition of a new faculty member. Although the school plans no great increase in faculty size, there is a need for gradual expansion to decrease the faculty-student ratio from the present 1:25 (estimate) to an ideal of 1:20. The present ratio compares favorably with that of other law schools and probably better than most since Wake Forest's small size enhances closer faculty-student relations. It is this important attribute that has been one of the school's major attractions to prospective students who seek respite from the numbered anonymity of undergraduate schools.

SCHOLARSHIPS

Next fall's scholarship program will be comparable to this year's, although it is expected that some of the gifts will increase

proportionately with the new $100 tuition boost. Seven Wake Forest Scholarships will again be available as well as numerous $200-$600 loans and gifts. A considerable increase has been made in the Mason Scholarship fund which was established by Mr. James Mason of Laurinburg, N. C. in honor of his parents. This significant gift by Mr. Mason will make the Mason Scholarships even more important to students seeking financial support.

ENROLLMENT

The law school has experimentally introduced a student recruitment program which has been successful despite a late start this year. Dean Bowman visited many area colleges and universities informing prospective applicants about law school in hope of attracting students interested in legal study. So far this spring there have been over 600 applications for the 90 available places in the first year class for fall, 1971. In the future, Dean Bowman expects to increase the area covered by the recruitment process so that more undergraduates will receive detailed facts on the study and practice of law. Educating potential applicants should improve the selection procedure since few undergraduates have sufficient knowledge of what legal study encompasses. Subsequently, recruitment will aid in attracting dedicated law students and eliminate potential applicants who find legal study is not what they really want.

GUEST LECTURERS

During the week of April 5-9, Professor Sylvester Petro of the New York University School of Law was guest lecturer at the law school. On April 7, Professor Petro participated in panels and discussions with Senator Sam Ervin, and on the evening of April 8, he gave a public lecture on "Liberty, the Rights of Man, and the Common Law." The students gained greater insight into the law from Professor Petro and Senator Ervin and their visit was certainly a focal point of the spring semester.

ORGANIZATIONAL NEWS

PHI ALPHA DELTA

Timberlake Chapter, which has been consistently ranked first or second since 1966, has been named the "Most Outstanding 1970 Active Chapter" of Phi Alpha Delta in competition with 113 other chapters throughout the United States, Canada, and Puerto Rico.

In keeping with our motto of "Service to the Student, The Law School and the Profession," Timberlake Chapter has been offering a balanced program which is both athletic and social, but foremost professional. In February, the chapter hosted state and local dignitaries at a portrait presentation and reception in honor of Dean Emeritus Carroll W. Weathers. Upcoming social functions will include the annual awards banquet on April 18 and the traditional spring outing at Tanglewood Park on May 8.

Professionally, the chapter's several committees have done excellent work again this year. The fraternity sponsored bus trips to both Raleigh and Washington, D. C. this spring to meet with state and national officials, and we have had a number of dinner meetings on campus with guest speakers. There has even been a speed-reading course offered to students in the chapter at a reduced rate. The Business Seminar Program provided interested students with the opportunity to visit large corporations, meet with their administrators, and gain an in-

sight into their operations. The Law Enforcement Seminar held at the Convention Center in conjunction with the Winston-Salem Police Department proved very successful, and the PAD Police Ride Program continues to be popular among students. We are especially proud of the fact that our High School Speakers Program has been so enthusiastically accepted by the local school system. The brothers have thoroughly enjoyed visiting the schools and discussing legal topics with classes.

Gary B. Tash, Justice

PHI DELTA PHI

As the Phi's approach the heart of the spring semester, we reflect upon the most successful year in recent history. We opened with a fantastic rush season, enticing no fewer than forty-seven first-year men to join our brotherhood.

Our professional program was also rejuvenated. Thus far we have held three very successful programs and plan at least two more. Drug abuse, as seen through various eyes, was the topic of the panel discussion that inaugurated our professional program in the fall. The next discussion consisted of a question and answer session with five lawyers from various fields. Plans are now being made to have a program by Lee Bounds, Director of the N.C. Department of Corrections.

There was ample opportunity for all to break away from the books as the Phi's maintained a full social calendar. There were parties held for the brothers and their guests. Plans are now being completed for the Phi's annual festivities at Tanglewood Park which will round out the social activities.

The fraternity has taken up residence, temporarily, in the lounge located in Poteat Dorm under the Post Office. Next fall, we will move into spacious Huffman Dorm. In these new accomodations all Phi's living on campus will have the luxury of a single room. It is hoped that the increased space will facilitate the study of law and will aid the Phil's in regaining their hold on the scholarship trophy.

Claude E. Simons, Jr., Magister

STUDENT BAR ASSOCIATION

The Student Bar Association will observe its nineteenth annual Law Day exercises on Friday evening, April 23, 1971. There will be a social hour on the third floor of Reynolda Hall from 6:00 to 7:00 P.M. The banquet will be held in the Magnolia Room of Reynolda Hall beginning at 7:00 P.M. The Honorable L. Richardson Preyer, United States Congressman from the 6th Congressional District of North Carolina, will be the speaker for the occasion. It is hoped that a large contingent of alumni will be present for the "event".

One of the main functions of the Student Bar Association this year has been the establishment of a Placement Service to be directed primarily by students. Under the effective leadership of Don Britt and Wallace Dixon, co-directors of the Placement Service, this service has performed a vital function in its initial year of operation. It is hoped that this service might be expanded so that it can be of benefit to both practicing lawyers and graduating law students, as well as helping to place law students in summer jobs.

Samuel E. Ewell, Jr.. President

FACULTY NOTES

E. McGruder Faris. Professor Faris is continuing work on the Business Corporation Committee of the General Statutes Commission. He is also in the process of making a second revision of his law and accounting textbook, *Accounting for Lawyers* (Bobbs-Merrill). This summer Atlanta will be Mr. Faris' home as he will be teaching corporations and wills and administration at the Emory University School of Law.

Henry C. Lauerman. Working on the General Statues Commission's Drafting Committee on the Revised Uniform Principal and Income Act occupies much of Professor Lauerman's interest. He is also working on an article to be published in *The Wake Forest Law Review* on the statute of limitations for product liability. During April 1-3, Mr. Lauerman participated in panel discussions at the University of Georgia Political Science Department for the American Society of International Law.

Hugh W. Divine. Dr. Divine is presently engaged in research for an article in *The Wake Forest Law Review* on the constitutionality of disciplinary actions in secondary schools. This is a subject which is currently of major concern to educators and lawmakers throughout the nation.

Leon H. Corbett, Jr. Mr. Corbett, occupying the newly created position of Assistant Dean, has been directing his attention on admissions for next fall. He has also been aiding the N.C. Bar Association as a member of the Committee on Law Office Management and Fees and is consultant to the N.C. Attorney General's Criminal Code Commission which is revising criminal law procedure.

James A. Webster, Jr. Dr. Webster is preparing a new textbook on N.C. real property law which will be published in the near future as an aid for practicing attorneys and students. Additionally, he is chairman of a General Statutes Commission subcommittee which is presently drafting laws to govern subcontractors' liens. Dr. Webster also served as chairman of the Municipal Corporations Institute held at the law school January 28-29, 1971, involving the three major law schools in the state. This summer, Dr. Webster will continue working with the N.C. Attorney General's office as he did last summer when he served as a consultant on a study of the efficiency of the N.C. Highway Department.

Robert E. Lee. A noted legal writer, Dr. Lee continues to publish often. He presently is preparing another edition of his agency and partnership text and will finalize a supplement to his three volume work, *North Carolina Family Law*, after the 1971 session of the General Assembly. Dr. Lee is a member of the General Statutes Commission's drafting committee on decedents estates and actively works as an arbitrator in labor disputes for the American Arbitration Panel and the N.C. Department of Labor. Somehow finding time from his full schedule, Dr. Lee and his wife Louise will attend the American Bar Association meeting in London and tour Europe afterwards.

Carroll W. Weathers. Timberlake Chapter of Phi Alpha Delta Law Fraternity recently honored the Dean Emeritus with a portrait presentation in the fraternity's lodge. Many state and local dignitaries were there for the ceremony. This year Dean Weathers is continuing work as a member of the General Statutes Commission and is teaching a one-half load schedule. He happily reports that his retirement from the Dean's office is giving him more time to talk with the law students who constantly seek his advice.

James E. Sizemore. Under the auspices of the Conference of Superior Court Judges, Professor Sizemore is serving as Reporter to the N.C. Superior Court Judges Committee on Pattern Jury Instructions. This group, which has already completed a book on criminal jury charges, is now drafting civil jury charges for both the District and Superior Courts. The purpose of the standard charges is to lessen appeals to the N.C. Supreme Court and subsequent reversals based on errors in jury charges. Professor Sizemore is also an active member of the N.C. Bar Association Standing Committee on Courts and Civil Litigation and has been writing for *The Wake Forest Law Review.*

Pasco M. Bowman, II. Following the Dean's arduous schedule and activities would fill several pages. He is busily contending with the needs of the school which often carry him on trips to local cities in addition to such places as New York and Washington. On May 30, Dean Bowman will have the honor of delivering the commencement address at his *alma mater,* Bridgewater College. Some of the Dean's recent activities have included meeting with alumni in New York, presiding at a panel discussion on international legal control of arms sales, and participating in the Continuing Legal Education Program on Corporate and Business Legal Problems at the University of Georgia School of Law in Athens.

NOTICES

RETROACTIVE J. D. DEGREES

A special ceremony will be held Homecoming Weekend, 1971, for the awarding of retroactive J.D. degrees to graduates of the law school presently holding LL.B. degrees. All alumni eligible should have received their applications for the degree and those who have not should contact the Dean's office. As of this date, Dean Bowman reports that the application response has been very heavy and the school hopes that everyone eligible will apply.

PLACEMENT SERVICE

As all alumni know, the highly competitive, time-consuming effort of a third year student seeking career opportunities is a difficult experience. Consequently, the students and the school have formed the Student Placement Service which is similar to such services in other law schools. Many firms, companies, and state and federal agencies have successfully used the service this year in obtaining Wake Forest law students for summer clerkships and permanent employment. All alumni who are interested in using the service to facilitate employment procedures are asked to direct their inquiries to The Student Placement Service, Wake Forest Law School, Winston-Salem, N.C. 27109.

LAW DAY, 1971

The annual Law Day functions will be held April 23 and keynote speaker will be Congressman L. Richardson Preyer of Greensboro, N.C. This program will be sponsored by the Student Bar Association and should be of interest to all alumni and students. For details, see the S.B.A. news section in this magazine, page 6.

LAW REVIEW

The 1971-1972 Board of Editors of the Wake Forest Law Review is as follows:

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RECENT DECISIONS AND LEGISLATIVE PROPOSALS

Summarized below are recent North Carolina and federal cases. The purpose of the Law Articles Section is to give the reader a concise, useful discussion of interesting points of law decided in recent cases. At the end of each article is a Research Bibliography which will enable the reader to begin meaningful legal reseach without wasting time in searching for law on point with the article. Also included in this section are Legislative Proposals which are model statutes their author feels are needed as law in North Carolina.

RECENT DECISIONS

N.C. OBSCENITY CASES

Drive-In Theatres, Inc. v. Huskey
435 F.2d 228 (4th Cir. 1970)
Shinall v. Worrell, 319 F.Supp. 485 (W.D.N.C. 1970).

In the case of *Drive-In Theatres, Inc. v. Huskey, supra,* a theater owner successfully sought an injunction enjoing the sheriff of Rutherford County from censorship activities in the process of enforcement of the obscenity Statute N. C. Gen. Stat. § 14-189.1 (1965). In the second case of *Shinall v. Worrell, supra,* this statute was declared unconstitutional by a three judge federal district court which stated that the North Carolina statute omitted the United States Supreme Court requisite that the material be utterly without redeeming social value. The statute's vague test of offensiveness was held to permit conviction if the material merely went beyond the customary limits of candor. In *Drive-In Theatres, Inc., supra,* the sheriff used a highly informal method of censorship, stating that any film shown with an "X" or "R" rating would subject the person so exhibiting it to criminal prosecution. The court found this method to be unconstitutional, it being a prior administrative restraint on free speech in violation of the First Amendment and the Fourteenth Amendment. The acts of the sheriff forced the plaintiffs in this action to discontinue the showing of adult films entirely. The district court judge found that the evidence clearly showed that the essential effect of the sheriff's acts would be to put the plaintiff out of business, if these acts were sustained.

One purpose of the First Amendment is to prevent various restraints upon publication. Motion pictures have been held to be "speech" by the United States Supreme Court and within the meaning of the First Amendment since the case of *Freedom v. Maryland,* 380 U.S. 51 (1965). Prior restraints upon speech and hence motion pictures may be proper but only with judicial superintendence and speedy judicial determination of the validity of the restraint. Thus the court held that it is clear that there must be a judicial adversary proceeding to determine obscenity.

As to what constitutes social value, the recent case of *United States v. Head,* 317 F.Supp. 1138 (La. 1970), held such to be present if it is a sincere contribution to the public discussion of issues about which information is needed or appropriate to en-

able members of society to cope with the exigencies of their period. The Massachusetts court in the case of *Commonwealth v. Donahue,* ..... Mass. ....., 263 N.E.2nd 589 (1970) stated that "girlie" magazines with nudes, seminudes, and photographs of both sexes in various poses, but which did not contain pictures explicitly portraying copulation or other sexual congress were protected by the First Amendment, and thus cannot form the basis for convictions for the sale or the possession with the intent to sell.

The *Shinall* case, *supra,* was an *ex parte* action to have the North Carolina obscenity law declared unconstitutional by a federal district court. The plaintiffs operated a bookstore in the city of Fayetteville, and had been convicted in both the state district and superior courts on various charges in violation of the obscenity law. The federal district court held the statute unconstitutional for three express reasons. First, the court stated that the statute omitted completely the third requisite of the United States Supreme Court for a valid obscenity law, that being that the material be utterly without redeeming social value. The court next stated that the statute created the presumption that one who disseminates obscene material is presumed to know the existence of the parts which render it obscene. The presumption thus creates the possibility that one who is without knowledge that he is disseminating obscene materials may be convicted. Such might lead the careful bookseller to become overly cautious and thus impose a restriction upon the distribution of constitutionally protected as well as obscene material. Thirdly, the presumption created by the statute that a person with more than three copies of obscene material is presumed to have the purpose to disseminate obscenity unlawfully fails to elicit a rational connection between the facts required to be shown and the legislative presumption. The true test is that there be a substantial assurance that the facts presumed are more likely than not to flow from the proven facts on which it is made to depend. Here, the presumption is arbitrary and tends to inhibit free discussion. Finally, as to whether the law violates the Fourteenth Amendment, the court stated that it was not necessary to decide the question since the statute is invalid under the First Amendment.

In the *Shinall* case, *supra,* the court futher cited the case of *Roth v. United States,* 354 U.S. 476 (1957), long the leading case, and the dictum statement of the court therein to the effect that obscenity is not protected by the First Amendment, but the court in the *Shinall* case goes further to say that this is no longer valid. For, while no one has yet been able to judicially define obscenity, the Court in *Stanley v. Georgia,* 394 U.S. 557 (1969) held " . . . admittedly obscene material is protected by the First Amendment from state interference with private possession. Obscenity may be bad speech but it is nevertheless "speech" and thus within the protection of the First Amendment - - - to an extent not yet entirely clear."

In summary it is clear that the law of obscenity in North Carolina, as well as in other states, is in a stage of change and turmoil and thus there is a need for innovative statutes to overcome the present limitations of the currently declared unconstitutional statutes.

RESEARCH BIBLIOGRAPHY

1. *A Book Named "John Cleland's Memoirs of a Woman of Pleasure" v. Attorney General,* 383 U.S. 413 (1960), stating the three requisites of obscene material.

2. The Requirements and Techniques for Holding an Adversary Hearing Prior to Seizure of Obscene Material, 48 N.C.L.Rev. 830 (1970).

3. Annot., 5 A.L.R.3d 1158 (1966). Modern Concepts of Obscenity.

Ronald D. Payne

RULES OF CIVIL PROCEDURE; SUFFICIENCY OF COMPLAINT

Sutton v. Duke, 277 N. C. 94, 176 S.E. 2d 161 (1970).

The complaint alleged that the defendants acting "jointly and severally" had negligently left open a gate, enabling a pony owned by one of the defendants to escape from its enclosure, and while the pony was at large it went to the mule lot belonging to W. I. Herring, that the pony excited the mules causing them to break out of and escape the Herring enclosure, and that the plaintiff's automobile collided with one of the mules on the highway.

The defendants demurred to the complaint upon the ground that alleged acts were not a proximate cause of the plaintiff's injuries. The Superior Court sustained the demurrer and dismissed the action. The Court of Appeals on December 31, 1969 reversed the trial court. 7 N.C.App. 100, 171 S.E.2d 343 (1969). The Supreme Court granted certiorari. Justice Sharp, speaking for the court, held that the complaint complied with the rule requiring notice pleading, and that it therefore sufficiently stated a claim for relief.

This case should be carefully considered because it afforded the North Carolina Supreme Court its first opportunity to discuss the new Norh Carolina Rules of Civil Procedure.

The new North Carolina Rules of Civil Procedure became effective January 1, 1970, and were made applicable "to actions . . . pending on that date . . ." N.C.Sess.L. ch 803 (1969). This appeal, as the court points out, was "caught in limine" by Rule 7(c) which abolished the use of demurrers. But Rule 12(b) performs substantially the same function as the old demurrer, and is its equivalent in this situation. By treating the defendant's demurrer, in this case as a Rule 12(b) (6) motion to dismiss, which is stated by the court to be the proper method of testing the legal sufficiency of the complaint, the question for consideration is whether the plaintiff has stated in his complaint "a claim upon which relief can be granted."

The court analyzes this question in the light of Rule 8(a) (1), pointing out the differences in Federal Rule 8(a) (2), New York's Civil Practice Law and Rules § 3013 (Mckinney, 1969-70 Supplement, Book 7B), and their North Carolina counterpart, N.C. Gen. Stat. § 1A-1, Rule 8(a) (1) (1967).

The court concluded that the North Carolina rule requires more facts to be stated in a negligence action in order to give the parties adequate notice of the claim than the federal rules require; that is, the complaint must contain allegations of some specific acts of negligence, while the federal forms contain no such specificity. On the other hand, the New York statute contains the entire North Carolina statement ending with the additional requirement of ". . . the material elements of each cause of action or defense," which was omitted from the North Carolina version. The General Assembly having replealed N.C. Gen. Stat. § 1-122 (1879) which required a complaint to state the ". . . facts constiting a cause of

a front and side view . . ." The photographs action . . ." and substituting for it Rule 8(a) (1) which requires that a pleading which sets forth a claim for relief ". . . shall contain (1) A short and plain statement of the claim sufficiently particular to give the court and the parties notice of the transactions, occurences, or series of transactions or occurances, intended to be proved showing that the pleader is entitled to relief . . .", the court adopted the conclusion that the General Assembly intended to change our previous requirement of detailed fact pleading for a more relaxed concept of notice pleading. Since the North Carolina rule is derived from the New York and federal rules, the Supreme Court will take advantage of the "sizable body of case law" which the courts of those jurisdictions have produced, for guidance in the development of "the philosophy of the new rules," without considering itself bound by their constructions. The result being that in North Carolina, pleadings alleging claims founded on negligence shall be required to be stated with greater specificity than in the federal courts, while with fewer facts than was formerly necessary under old North Carolina Gen. Stat. § 1-122 (1879).

The court, citing 2A *Moore's Federal Practice* § 12.08 (2d ed. 1968), held that ". . . a complaint should not be dismissed for insufficiency unless it appears to a certainty that plaintiff is entitled to no relief under any statement of facts which could be proved in support of the claim."

As stated above, the motion to dismiss tests the legal sufficiency of the complaint, and the motion should be granted only when under the former practice, a demurrer would have been sustained because the complaint affirmatively disclosed that the plaintiff had no cause of action against the defendant.

As applied to the facts in this case, the court decided that it could not, from the complaint alone, determine that the Plaintiff could "prove no facts which would entitle him to recover from the defendants . . .", or that the complaint was so vague or ambiquous that the defendants could not be reasonably expected to frame a responsive pleading.

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Sizemore, *General Scope and Philosophy of the New Rules,* 5 Wake Forest Intra. L. Rev. 1 (1969).

2A *Moore' Federal Practice* § 12.08 (2d. ed. 1968).

Stockton, *Jurisdiction and Process,* 5 Wake Forest Intra. L. Rev. 46 (1969).

48 N. C. L. Rev. 636 (1970).

Kenneth W. Honeycutt

Editor's Note:

For a detailed analysis of this case, see the June issue of the Wake Forest Law Review, Vol. 7 (1971).

CONSTITUTIONAL RIGHTS IN OUT-OF-COURT PHOTOGRAPHIC LINE-UP

State v. Accor and State v. Moore, 277 N. C. 65, 175 S.E. 2d 683 (1970).

The dwelling house of Mr. and Mrs. Whit Martin, aged 75, was broken and entered by two Negro men around 2:15 a.m. A 52-year-old daughter, awakened by the noise, aroused both parents and a 47-year-old brother. The four encountered the intruders in the kitchen and adjoining hall, and a general melee followed. Estimates of the length of the scuffle varied from three to ten minutes. The hall was lighted only by a night-light, but the light in the kitchen was sufficient to illuminate both the kitchen and hall. The intruders fled when a neighbor turned on a flood light.

The following day photographs of the defendants Accor and Moore along with photographs of eleven other adult male Negroes were placed in albums for possible identification. There "were no numbers, code, or otherwise placed on said photographs to indicate who any particular person was . . . each photograph was taken in an identical location . . . each person . . . was taken from

of the defendants were made that morning, but there were no particular markings to indicate what date any photograph had been made. Each of the four members of the household examined the album without the presence of any other member of the household, thus preventing possible influence.

Subsequently, warrants for first-degree burglary were issued for the defendants based upon the information and identification by the householders; no subsequent police line-up was held.

At the time defendants were photographed they were read a "Miranda warning," but neither had been charged with the commission of any crime. Each had been brought to the police station without warrant or probable cause, neither was advised that he was a suspect in the present case, and neither had counsel when the photographs were taken.

On appeal to the state Supreme Court the court held that since neither defendant was charged with any crime at the time they were photographed, N. C. Gen. Stat. § 114-19 (1965) (which prohibits the taking of photographs of persons charged with a misdemeanor), neither authorized or prohibited the taking of photographs under the above cited circumstances. But the court ruled that there was no evidence that the photographs were taken "constitutionally," and hence were illegal. The court granted a new trial, holding that a challenge to the in-court identification of defendants as tainted by the out-of-court photographic identification was valid since the state had not established at the *voir dire* hearing, as required by *U. S. v. Wade,* 388 U. S. 218 (1967), that the state could "by clear and convincing evidence," prove that the in-court identifications were of independent origin and untainted by the illegality of the photographic identification.

In *State v. Accor, supra,* the court specifically refused to expand the right of counsel at a police line-up (*U. S. v. Wade, supra,* and *Gilbert v. California,* 388 U. S. 263 (1967) to include out-of-court examinations of photographs of the suspect.

In *U. S. v. Wade, supra,* a court-room identification by officials of the bank which had been robbed was challenged with defense contending that a line-up conducted prior to the trial "without notice to and in the absence of his appointed counsel" violated Fifth and Sixth amendment guarantees against self-incrimination and of right to counsel. In holding that the postindictment line-up was a critical stage of prosecution at which defendant was entitled to counsel, the court noted that *Powell v. Alabama,* 287 U. S. 45 (1932) required counsel at the arraignment since "what happens there may affect the whole trial," and subsequent decisions require scrutinization of "any pretrial confrontation of the accused to determine whether the presence of his counsel is necessary to preserve the defendant's basic right to a fair trial."

In *Gilbert v. California, supra,* the Court again held that postindictment pretrial line-up was a critical stage of proceedings and further held that testimony at guilty and penalty stages of the proceedings concerning the identification of the defendants at an illegal pretrial line-up were inadmissible *per se* and that the state was barred from showing that the testimony had an independent origin.

When in *State v. Accor, supra,* the North Carolina Supreme Court declined to expand *U. S. v. Wade, supra,* and *Gilbert v. California, supra,* to include out-of-court examinations of photographs including those of suspects either at liberty or in custody

without benefit of counsel, the court indicated its intention of letting the United States Supreme Court blaze the trail of any further expansion of *U. S. v. Wade, supra,* and *Gilbert v. California, supra.*

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2. *Powell v. Alabama,* 287 U. S. 45, 53 Sup. Ct. 55, 77 L. Ed. 158 (1932).

3. *Simmons v. U. S.,* 390 U. S. 377, 88 Sup. Ct. 967, 19 L. Ed. 2d 1247 (1968).

4. *U. S. v. Wade,* 388 U. S. 218, 87 Sup. Ct. 1926, 18 L. Ed. 2d 1149 (1967).

John Lawrence Pinnix

LESSER INCLUDED OFFENSE

State v. Harris, 277 N. C. 435, 177 S. E. 2d 865 (1971).

On the night of October 19, 1968, while walking home from work, a young woman, Annie Lee Harvey, was grabbed by two men and pulled into a nearby alley where the men attempted to have sexual intercourse with her. The two men, one of whom was the defendant George Harris, made it very clear to Miss Harvey what their intentions were. Among other things they pinned her to the ground and removed her underclothing. The two openly discussed who would be first to have intercourse with the young lady. Despite the efforts of the young woman to resist the advances of the two men, she was not able to escape. Miss Harvey was saved from her fate by the timely intervention of Alton Collins, a passerby, who, having heard the calls for help from the alley, came to the rescue. It appears from the record that the other attacker was not identified or apprehended. The defendant was arrested and brought to trial during the 1968 Session of Wake Superior Court on the charge that he, George Harris, on the night of October 19, 1968, assaulted Annie Lee Harvey, a female, with the intent to rape her, a violation of N. C. Gen. Stat. § 14-22 (1917). The defendant was found guilty as charged and a sentence of 12 to 15 years' imprisonment imposed. The defendant did not appeal or attempt to do so due to his not having known of his right of appeal until the prescribed time for giving such notice had elapsed. The defendant was permitted to file a petition with the Court of Appeals for a writ of certiorari to permit an appellate review. The petition was granted August 21, 1970, by the Court of Appeals to review the contention by the defendant that the prison sentence of not less than 12 nor more than 15 years constitutes cruel and unusual punishment in violation of Article I, Section 14, of the Constitution of North Carolina, and the Eighth Amendment of the Constitution of the United States.

As a basis for this contention, the defendant asserts that the felony for which he is charged, as created by N. C. Gen. Stat. § 14-22 (1917), is a lesser included offense of the felony created by N. C. Gen. Stat. § 14-26 (1923). It is to this contention that this writing is addressed.

N. C. Gen. Stat. § 14-22 (1917) provides: "Every person convicted of an assault with intent to commit a rape upon the body of any female shall be imprisoned in the State's prison not less than one year nor more than fifteen years."

In order for an act to constitute an offense under this statute, the State is required to show that the defendant did com-

mit an assault, the intent of which was to force the female to have sexual relations with him, notwithstanding any resistance on the part of the female. It also appears that an assault upon a female under the age of 12 represents the crime of assault with intent to commit rape in a vast majority of the states since the requirement of force is nullified by the inability of a child under 12 to give consent. *State v. Lucas,* 267 N. C. 304, 148 S. E. 2d 130 (1966); *State v. Hartsell,* 272 N. C. 710, 158 S. E. 2d 785 (1968).

In North Carolina it is not necessary that the attacker complete the offense of assault with intent to commit rape nor is it necessary that the defendant retain the intent throughout the assault. It is sufficient to show that the defendant at some time during the actual assault had the intent to gratify his passion upon the woman, notwithstanding any resistance on her part in order to convict the defendant under this statute. *State v. Gammons,* 260 N. C. 753, 133 S. E. 2d 649 (1963); *State v. Shull,* 268 N. C. 209, 150 S. E. 2d 212 (1966); *State v. Goines,* 273 N. C. 509, 160 S. E. 2d 469 (1968).

N. C. Gen. Stat. § 14-26 (1923) provides: "If any male person shall carnally know or abuse any female child, over twelve and under sixteen years of age, who has never before had sexual intercourse with any person, he shall be guilty of a felony and shall be fined or imprisoned in the discretion of the court."

In North Carolina carnal knowledge and sexual intercourse have been held to be synonymous, and are existent in a legal sense where there is the slightest penetration. *State v. Bowman,* 232 N. C. 347, 61 S. E. 2d 107 (1950); *State v. Whittmore,* 255 N. C. 583, 122 S. E. 2d 396 (1961).

Rape and carnal knowledge are distinct offenses in North Carolina. In the first, prior chastity is immaterial and consent will establish a complete defense, but in the second consent is immaterial and the lack of chastity is a defense. It has also been held that prosecution for rape will not bar a subsequent prosecution for the crime of carnal knowledge of a female between the ages of 12 and 16 years of age. *State v. Barefoot,* 241 N. C. 650, 86 S. E. 2d 424 (1955).

The punishment for the crime created by N. C. Gen. Stat. § 14-26 (1923) cannot exceed ten years imprisonment. This rule, as to sentence, came in *State v. Grice,* 265 N. C. 587, 144 S. E. 2d 659 (1965).

It is reasonable to assume that the defendant, in making the basis of his appeal the question of whether or not the crime created by N. C. Gen. Stat. § 14-22 (1917) was a lesser included offense of the crime created by N. C. Gen. Stat. § 14-26 (1923), was relying upon the difference in the duration of the sentences as being cruel and unusual. If he had been found guilty of the latter, the length of his sentence could not have been longer than 10 years. If the crime set forth in N. C. Gen. Stat. § 14-22 (1917) was, in fact, a lesser included offense, and the defendant received a sentence of 12 to 15 years, then the punishment would be greater than that allowed by statute.

The Supreme Court of North Carolina held that the sentence of 12 to 15 years for the crime of "assault on a female with the intent to commit rape" was not cruel nor unusual as claimed by the defendant. In so holding the Supreme Court pointed out that N. C. Gen. Stat. § 14-22 (1917) was not a lesser included offense of N. C. Gen. Stat. § 14-26 (1923).

It had been previously held in North Carolina that the felony set forth in N. C. Gen. Stat. § 14-22 (1917) was a separate and distinct crime from that set forth in N. C. Gen. Stat. § 14-26 (1923). The essential elements of the two are not identical. In the former the prior virginity of the female child is an essential element of the charge, and consent on her part does not act as a defense. In the latter the prior virginity is of little import, but the consent of the female will act as a complete defense. The felonies are distinct and separate. *McClure v. State*, 267 N. C. 212, 148 S. E. 2d 15 (1966).

The Supreme Court of North Carolina in holding as it did in this case has shown that it intends to uphold the doctrine set forth in *McClure v. State*, 267 N. C. 212, 148 S. E. 2d 15 (1966), which disallowed the inference that N. C. Gen. Stat. § 14-22 (1917) was a lesser included offense of N. C. Gen. Stat. § 14-26 (1923). This has set up an effective bar to the contention that the conviction of the former and sentencing in accordance with that statute is cruel and unusual relative to the maximum sentence in a conviction of the latter.

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2. *State v. Barefoot*, 241 N. C. 650, 86 S. E. 2d 424 (1955).
3. *State v. Harris*, 277 N. C. 435, 177 S. E. 2d 865 (1971).
4. *State v. Hartsell*, 272 N. C. 710, 158 S. E. 2d 785 (1968).
5. *State v. Goines*, 273 N. C. 509, 160 S. E. 2d 469 (1968).
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C. Gary Triggs

VIOLATION OF A MOTOR VEHICLE STATUTE AS CONTRIBUTORY NEGLIGENCE

Atkins v. Moye, 277 N. C. 179, 176 S. E. 2d 789 (1970).

This case involves an action for personal injuries sustained by the plaintiff, Atkins, when he drove his automobile into the rear of a parked tractor-trailer truck, which was parked on the highway during the evening. The case was tried in the Superior Court of Buncombe County. A judgment was entered dismissing the action following the jury's finding of contributory negligence. Atkins appealed to the Court of Appeals, 8 N. C. App. 126, 174 S. E. 2d 34 (1970), and was awarded a new trial. Defendant then appealed to the state Supreme Court.

In the investigation of the accident an empty whiskey bottle was found, and it was reported that Atkins had been drinking, though several witnesses testified that he had not. The trial judge instructed the jury that driving under the influence of alcohol in violation of N. C. Gen. Stat. § 20-138 (1937) is negligence, and that a person is within the meaning of the statute when he has drunk a sufficient quantity to cause him to lose normal control of his body or mental faculties or both. The judge then charged the jury, ". . . if the defendant has satisfied you by the greater weight of the evidence that on this occasion the plaintiff was operating his motor vehcile on this highway while he was under the influence of some intoxicating liquor, as I have defined that term to you, then that would be negligence on the part of the plaintiff. If you are further so satisfied that this contributed to the plaintiff's own injuries, then this would be contributory negligence upon the part of the plaintiff."

Atkins objected in that there was no evi-

dence he was operating his automobile while under the influence of intoxicants, and, conceding arguendo there was such evidence, the judge did not, as then required, explain the application of the statute to the evidence in the case.

The court however found error in the judge's failure to instruct that if the jury found the plaintiff to have been under the influence, such condition would merely be evidence to be considered along with all the other evidence in determining whether he was chargeable with contributory negligence; that for a finding that the plaintiff was under the influence to be conclusive of the issue, it must be accompanied by the further finding that such condition caused him to operate his automobile in a manner which constituted a proximate cause of the collision.

Many cases in North Carolina concerning motor vehicles have supported this holding. 60A C.J.S. *Motor Vehicles* § 252 (1969) at page 54 states, "the violation of a motor vehicle statute or ordinance imposes liability for any injury only if such violation was the, or a, proximate cause of the injury." In *Pearsall v. Duke Power Co.,* 258 N.C. 639, 129 S.E. 2d 217 (1963), the court held that the violation of a statute governing a motorist making a left turn at a highway intersection constitutes negligence per se and such negligence is actionable if it is a proximate cause of injury.

In *Atkins v. Moye, supra,* the court held, "Mere proof that a motorist involved in a collision was under the influence of an intoxicant at the time does not establish a causal relation between his condition and the collision; his condition must have caused him to violate the rule of the road and to operate his vehicle in a manner which was a proximate cause of the collision."

In cases where the violation of a statute is pleaded as the proximate cause of contributory negligence the court has held it is essential to the establishment of contributory negligence that the defendant show negligence on the part of the plaintiff constituting a proximate cause of the injury. In *Adams v. State Board of Education,* 248 N.C. 506, 103 S.E.2d 854, (1958), and *Honeycutt v. Strube,* 216 N.C. 59, 134 S.E. 2d 110 (1964), the court held the burden was on the defendants to prove their allegations in respect to contributory negligence.

The court in *Atkins v. Moye, supra,* ruled, "The defendant who asserts plantiff's contributory negligence as a defense has the burden of proving it, and the contention that certain acts or conduct of the plaintiff constituted contributory negligence should not be submitted to the jury unless there is evidence from which such conduct might reasonably be inferred; however, the defendant is entitled to have any evidence tending to establish contributory negligence considered in the light most favorable to him, and, if diverse inferences can reasonably be drawn from it, evidence must be submitted to the jury with appropriate instructions as to its bearing on these issue."

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1. 60A C.J.S. *Motor Vehicles* § 252 (1969).
2. *Adams v. State Board of Education,* 248 N.C. 506, 103 S.E.2d 854 (1958).
3. *Honeycutt v. Strube,* 216 N.C. 59, 134 S.E.2d 110 (1964).
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William T. Biggers

SEARCH OF CAR WITHOUT A WARRANT AS INCIDENT TO ARREST FOR A TRAFFIC VIOLATION

State v. Jordan, 277 N.C. 341, 177 S.E.2d 289 (1970).

About 3:30 a.m. one morning in Greensboro, N.C. two police officers decided to make a routine check of a car. As the officers turned their car around to approach the car, the defendant's car sped away and ran a red light. After a short chase, defendant's car stopped, and a passenger jumped from the auto and ran. In fleeing from a pursuing officer the passenger dropped something to lighten his load and was able to outdistance the policeman. Upon returning to the place the passenger dropped the object, the policeman found a small screwdriver, a pair of brown work gloves, a pair of metal cutters, an adjustable wrench, a brace and bit, punches, and chisels. The defendant was apprehended at his car by the other police officer. In the car the officers recovered a pistol, a crowbar, and a large screwdriver from the floor. The officers then placed the defendant under arrest for possession of burglary tools and proceeded to make a thorough search of the defendant's car and discovered $50.00 in currency and a small punch in the glove compartment. The money was in a wrapper marked "Florida Street Baptist Church." The church had been broken into earlier that same night.

The defendant offered no evidence but pleaded not guilty. He was convicted and appealed. The Court of Appeals affirmed the convictions (defendant was charged with three crimes). The defendant then appealed to the North Carolina Supreme Court on grounds that the police made an illegal search of his car in that they had no warrant. The North Carolina Supreme Court upheld the convictions.

In holding that the search was legally made, our court relied on *Chambers v. Maroney*, 399 U.S. 42 (1970). In that case police had received a report of a robbery along with a description of the car and of the four men seen in the auto at the time of the robbery. Within an hour two policemen spotted a car which fitted the description of the robbery vehicle along with four men inside. The officers arrested the men in the car and removed the car to the police station where they conducted a warrantless search of the car in which they found guns and ammunition and property stolen in the robbery. The Supreme Court held the search and seizure was reasonable, noting that there was a great difference between an immobile house or office and a highly mobile automobile. While the former usually requires a valid search warrant for any search, under appropriate conditions an automobile may be warrantlessly searched.

The Fourth Amendment prohibits "unreasonable" searches and seizures. The United States Supreme Court has insisted upon probable cause being present as a minimum requirement for a "reasonable" search permitted by the Constitution. Before *Chambers v. Maroney*, *supra*, the Court required as a general rule the judgment of a magistrate on the probable cause issue and the issuance of a warrant before search. Upon stopping a car to arrest a driver for a traffic violation, if probable cause arose, the officer had a right to make an immediate search of the car, but the Supreme Court had not determined the question of whether a warrant was needed after the automobile had been taken to the station house and become immobile, like a building, and thereby require a warrant for a valid search. The North Carolina Supreme Court in *State v. Haney*, 263 N.C. 816, 140 S.E.2d 544 (1965) ruled that a search of defendant's auto conducted without a warrant and twenty minutes after the arrest of the de-

fendant was not an illegal search and seizure. *State v. Haney, supra,* follows the general rule that an officer is permitted to search any conveyance used by the person arrested. The Supreme Court upheld this general rule in *Chambers v. Maroney, supra,* by holding that a warrantless search at the station house was permissible, so long as there was probable cause for the officers to have made a search at the scene of the arrest. The Supreme Court said, in effect, that once the right to make a warrantless search of an automobile attaches, that right does not become disestablished merely because the officers move the automobile to a more reasonable or favorable place to conduct the search.

While *State v. Jordan, supra,* certainly is no landmark decision, it does help clarify to a little greater extent our search and seizure cases, which Annot., 10 A.L.R.3rd at 318 (1966) says, "cannot be satisfactorily reconciled." It can be said that the rule is firmly established that when law enforcement officers arrest a driver for a traffic violation and have probable cause to believe that the auto contains that which by law is subject to seizure, the search and seizure is valid if conducted without a warrant, whether the search and seizure is conducted at the scene of the arrest or later at the station house.

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Jim R. Funderburk

LEGISLATIVE PROPOSALS

AMENDED DISABILITY STATUTE

Under North Carolina's present disability statute, N.C. Gen. Stat. § 1-17 (1899) only three disabilities are provided for - infancy, insanity, or imprisonment. Necessary legislation is needed so as to provide protection for an individual who is *non compos mentis* resulting from a state of unconsciousness, amnesia, or other mental impairment.

As 18 year olds are now given the right to vote, the infancy provision should be reduced to 18 years. Furthermore, protection should be given those individuals who may be held as prisoners of war, political prisoners, or as kidnap victims. It is therefore urged that G.S. § 1-17 (1899) be repealed and replaced with a statute that would protect individuals in one or more of the above situations.

A BILL TO BE ENTITLED AN ACT TO AMEND G.S. § 1-17, RELATING TO DISABILITIES.

The General Assembly of North Carolina do enact:

Section 1. G.S. § 1-17 is hereby amended to read as follows:

"G.S. § 1-17. *Disabilities.*—A person entitled to commence an action, except for a penalty or forteiture, or against a sheriff or other officer for an escape, who is at the time the cause of action accrued either—

(1) Within the age of eighteen years; or

(2) Insane, unconscious, in a state of amnesia, or otherwise mentally impaired; or

(3) Imprisoned on a criminal charge, or in execution under sentence for a criminal offense; or

(4) Imprisoned or otherwise detained by a foreign government; or

(5) Imprisoned or otherwise detained by individuals or organizations committing thereby an unlawful act;

may bring his action within the times herein limited, after the disability is removed, except in an action for the recovery of real property, or to make an entry or defense founded on the title to real property, or to rents and services out of the same, when he must commence his action, or make his entry, within three years next after the removal of the disability, and at no time thereafter."

Sec. 2. All laws and clauses of laws in conflict with this Act are hereby repealed.

Sec. 3. This Act shall become effective upon its ratification.

J. Reid Potter

ENVIRONMENTAL PROTECTION ACT

A BILL TO BE ENTITLED THE ENVIRONMENTAL PROTECTION ACT OF 1971, RELATING TO ACTIONS FOR DECLARATORY AND EQUITABLE RELIEF FOR PROTECTION OF THE AIR, WATER, AND OTHER NATURAL RESOURCES AND THE PUBLIC TRUST THEREIN; TO PRESCRIBE THE RIGHTS, DUTIES AND FUNCTIONS OF THE ATTORNEY GENERAL, ANY POLITICAL SUBDIVISION OF THE STATE, ANY INSTRUMENTALITY OR AGENCY OF THE STATE OR OF A POLITICAL SUBDIVISON THEREOF ANY PERSON, PARTNERSHIP, CORPORATION, ASSOCIATION, ORGANIZATION OR OTHER LEGAL ENTITY; AND TO PROVIDE FOR JUDICIAL PROCEEDINGS RELATIVE THERETO.

The General Assembly of North Carolina do enact:

Sec. 1. This act shall be known and may be cited as the "Environmental Protection Act of 1971."

"Sec. 2. (1) The Attorney General, any political subdivision of the state, any instrumentality or agency of the state or of a political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity may maintain an action in the superior court having jurisdiction where the alleged violation occurred or is likely to occur for declaratory and equitable relief, including, but not limited to damages, against the state, any political subdivision thereof, any instrumentality or agency of the state or of a political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity for the protection of the air, water and other natural resources and the public trust therein from pollution, impairment or destruction.

(2) In granting relief provided by subsection (1) where there is involved a standard for pollution or for an anti-pollution device or procedure, fixed by rule or otherwise, by an instrumentality or agency of the state or a political subdivision thereof, the court may:

(a) Determine the validity, applicability and reasonableness of the standard.

(b) When a court finds a standard to be deficient, direct the adoption of a standard approved and specified by the court.

Sec. 2a. If the court has reasonable ground to doubt the solvency of the plaintiff or the plaintiff's ability to pay any cost or judgment which might be rendered against him in an action brought under this act, the court may order the plaintiff to post a surety bond or cash not to exceed $500.00.

Sec. 3. (1) When the plaintiff in the action has made a prima facie showing that the conduct of the defendant has, or is likely to pollute, impair or destroy the air, water or other natural resources or the public trust therein, the defendant may rebut the prima facie showing by the submission of evidence to the contrary. The defendant may also show, by way of an affirmative defense, that there is no feasible and prudent alternative to defendant's conduct and that such conduct is consistent with the promotion of the public health, safety and welfare in light of the state's paramount concern for the protection of its natural resources from pollution, impairment or destruction. Except as to the affirmative defense, the principles of burden of proof and weight of the evidence generally applicable in civil actions in the superior courts shall apply to actions brought under this act.

(2) The court may appoint a commissioner, who shall be a disinterested person and technically qualified, to take testimony and make a record and a report of his findings to the court in the action.

(3) A copy of the pleadings and other papers in an action brought under this act shall be filed with the Attorney General who shall maintain and preserve all pleadings and papers filed pursuant to this act.

(4) Costs may be apportioned to the parties if the interests of justice require.

Sec. 4. (1) The court may grant temporary and permanent equitable relief, or may impose conditions on the defendant that are required to protect the air, water and other natural resources or the public trust therein from pollution, impairment or destruction.

(2) If administrative, licensing or other proceedings are required or available to determine the legality of the defendant's conduct, the court may remit the parties to such proceedings. In so remitting the court may grant temporary equitable relief where necessary for the protection of the air, water and other natural resources or the public trust therein from pollution, impairment or destruction. In so remitting the court shall retain jurisdiction of the action.

(3) Upon completion of such proceedings, the court shall adjudicate the impact of the defendant's conduct on the air, water or other natural resources and on the public trust therein in accordance with this act. In such adjudication the court may order that additional evidence be taken to the extent necessary to protect the rights recognized in this act.

Sec. 5. (1) Whenever administrative, licensing or other proceedings, and judicial review thereof are available by law, the agency or the court shall permit the Attorney General, any political subdivision of the state, any instrumentality or agency of the state or of a political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity to intervene as a party on the filing of a pleading asserting that the proceeding or action for judicial review involves conduct which has, or which is likely to have, the effect of polluting, impairing or destroying the air, water or other natural resources or the public trust therein.

(2) In any such administrative, licensing or other proceedings, and in any judicial review thereof, any alleged pollution, impairment or destruction of the air, water or other natural resources or the public trust therein, shall be determined, and no conduct shall be authorized or approved which does, or is likely to have, such effect.

(3) The doctrines of collateral estoppel and res judicata may be applied by the court to prevent multiplicity of suits."

Sec. 6. This act shall be supplementary to existing administrative and regulatory procedures provided by law.

Sec. 7. This act shall take effect upon enactment.

J. Reid Potter

Editor's Note:

This proposed legislation is, in part, based on Mich. Gen. Stat. Annot. § 14.528 (201) - 14.528 (207) (1970).

THE PRESIDENT'S PAGE

LONNIE B. WILLIAMS
Class of 1953
President, Lawyer Alumni Association

The Wake Forest Lawyers Alumni Association is, comparatively speaking, a new organization. As is the case with most organizations of its kind, its progress has been slow; however, it represents some unity of direction among the interested alumni of the Law School.

As a member of the Board of Trustees of the University, I have observed the ever-increasing financial difficulties experienced in operating an institution of higher learning. Those institutions most successful in meeting the demands have been those with a high degree of alumni participation in the continuing affairs of the alma mater.

In the case of a professional school, the alumni have a much deeper responsibility. It is the duty of the alumni to watch, to criticize, to question, and, most of all, to assist in the finishing of the product that becomes a part of our profession.

The tangible results of an aroused alumni is demonstrated by the recent campaign of the medical alumni in behalf of the new addition to the Baptist Hospital and School of Medicine.

Briefly, the goals which the Association hopes to reach are these: (1) active participation by a large percentage of the alumni in a dues-paying association; (2) periodic meetings with the Law School administration to explore curriculum, practical experience, and immediate needs; (3) assumption by the alumni of its responsibility for a part of the financial requirements of the Law School, many of which cannot be provided from other sources; and (4) active participation in programs of continuing legal education.

The Association stands upon the brink of a campaign to assist the Law School in obtaining a vitally needed addition to the law building. Modest estimates of costs are $200,000. One eighth of this sum has been provided through a contribution to the University and applied to this project. The remaining $175,000 is the goal of this campaign. If general support from the law alumni is forthcoming, attainment of the goal will be prompt. The addition will be a fitting tribute to Dean Carroll Weathers whose efforts in behalf of the school and of the Association have known no limits.

Through the Law Review and the "Wake Forest Jurist" the achievement of the goals to which we strive are within easy grasp if we can only reach out together.

Congratulations from the Association to the Law School and to the "Wake Forest Jurist."

A MESSAGE FROM THE N.C. STATE BAR PRES.

LEON H. CORBETT, SR.
President of the
N.C. State Bar

The North Carolina State Bar is an agency of the State, created by the 1933 Legislature, with 4889 members as of our last annual meeting. The actual business is conducted by its Council and is comprised of a Councilor elected from each of its thirty (30) Judicial Districts, plus its officers, who consist of a President, First Vice-President, Second Vice-President and Secretary and Treasurer, together with the three (3) immediate past Presidents. The Council is divided into eight (8) standing committees, same being the Executive Committee, Ethics Committee, Grievance Committee, Unauthorized Practice of Law Committee, Membership and Dues Committee, Committee on Legal Aid to Indigents and Referrals, and the Committee on Professional Corporations. From time to time the Council is authorized to appoint Special Committees to consider certain matters and these Special Committees terminate upon completion of their respective purposes.

Last year, the Committee on Unauthorized Practice of Law handled 39 cases, the Grievance Committee 113 cases, and the Ethics Committee 47 cases, while the Executive Committee handled many matters of general concern to the association.

The Council also appoints the members of the Board of Law Examiners, passes on their rules and regulations and disciplines the profession.

The North Carolina State Bar has recently distributed a publication containing the Canons of Ethics, Ethics Opinions, Rules and Regulations of the Council and the Board of Law Examiners. A copy of this book was distributed to every sole practitioner, firms, and several copies to the various law schools in our State.

A Special Committee has been appointed to consider and make specific recommendations concerning the practice in publication, promotion and marketing of law book services, which we hope will be beneficial to the profession.

The officers of the State Bar attend the meetings of the American Bar Association and also appoint three (3) members for the House of Delegates of the American Bar Association.

Marked changes will be made in the Annual Meeting, and we will have some nationally prominent speakers. Every member of The North Carolina State Bar is urged to begin making preparations immediately to attend our Annual Meeting to be held on October 22nd, 1971 at the Sir Walter Hotel in Raleigh.

The officers of our organization also attend the meetings of the Board of Governors of the North Carolina Bar Association and the cooperation between The North Carolina State Bar and the North Carolina Bar Association is pleasant, informative and of mutual benefit to both organizations. I am happy to report that this relationship is very close and we are coordinating our efforts so as to obtain the maximum benefits for our profession.

The April 15th and 16th, 1971 meeting of the Council was held at the Holiday Inn-North in Winston-Salem, and the July Meeting has been postponed until August due to the conflict with the American Bar Association Meeting in London. This meeting will be held on August 19th and 20th, 1971 at the John Yancey Hotel at Morehead City. All lawyers are invited and urged to attend this meeting in order to observe your Council at work.

Please let me express to each of the attorneys of this State, my appreciation for electing me President of The North Carolina State Bar. It is a distinct honor which I accepted with mixed feelings of pride and humility. We have many problems and we contemplate additional matters to be dealt with and problems to be solved, however, if we work together to maintain the high ideals of our profession, with a dedicated purpose, we shall have a successful year. May I urge each of you to take an active part in the affairs of your profession, and especially, may I urge you to attend, at least, the Annual Meeting.

FOCUS —— FACULTY ALUMNI

Dr. Robert E. Lee

One reason for Wake Forest's reputation as an institution of quality legal education is the presence of Robert E. Lee on the faculty. Dr. Lee, affectionately known as "Nig", holds B.S. and LL.B. degrees from Wake Forest University, the M.A. degree in Public Law from Columbia University, and LL.M. and S.J.D. degrees from Duke University. Dr. Lee is the author of ten law books, is a specialist in North Carolina Family Law, and is known to the general public through a column, "This is the Law", which appears in various newspapers published throughout the state. Dr. Lee's experience in legal education is as varied as his writings. He has taught at Wake Forest University, the University of Florida, Temple University in Philadelphia, and the U.S. Army University at Shrivenham, England.

From 1946-1950, he served as Dean and Professor of Law at Wake Forest and from 1951-1952, as Chief Counsel, Office of Price Stabilization, Region Four, and has been a Professor of Law at Wake Forest since 1950.

Dr. Lee's memberships in Phi Beta Kappa, Delta Sigma Pi Business Fraternity and Phi Alpha Delta Law Fraternity were the building blocks for his later achievements in North Carolina government. These include serving as a member of the General Statutes Commission of North Carolina, the Commission to Study Laws of Domestic Relations, the Commission to Improve the Administration of Justice in North Carolina, and the Legislative Drafting Committee on Laws of Decedents' Estates.

Dr. Lee has three children. His two sons, Chuck and Robert, are lawyers and alumni of Wake Forest Law School, and his daughter, Betty, is an alumna of Wake Forest. Dr. Lee is the titular head of his household but concedes that his wife Louise is the "neck". One learns with no surprise that Dr. Lee's hobby is reading law. The present law students will remember "Nig" Lee for his hypotheticals involving Mary Worth and the faithful horse, Nelly, but more importantly, for his genuine concern for the progress of law students.

Dean Carroll W. Weathers

Carroll W. Weathers occupies a position of legendary stature on the Wake Forest Law School Faculty. He served as Dean from July, 1950 until July, 1970 and is presently a Professor of Law and Dean Emeritus on the faculty.

Dean Weathers received the A.B. degree from Wake Forest College in 1922 and the LL.B. degree from Wake Forest Law School in 1923. He was in private law practice in Raleigh from 1923-1950. While in Raleigh, he served in the 1935 General Assembly as a member of the Senate from Wake County

and while a Senator was chairman of the Constitutional Amendments Committee of the North Carolina Senate. From 1945-1950, he was Chairman of the Raleigh Civil Service Commission. After the North Carolina General Assembly set up the Commission on Legislative Representation in 1955, Governor Hodges appointed Carroll Weathers to serve as Chairman from 1955-1957. He is currently a member of the General Statutes Commission of North Carolina.

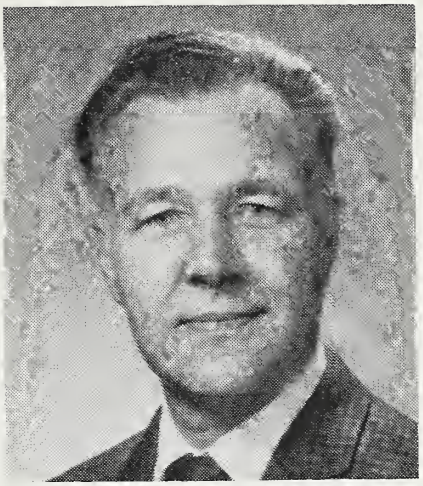
In 1952, Dean Weathers was Chairman of the Committee on Revision of Library Standards of the Association of American Law Schools. He was President of the Wake County Bar Association in 1943 and Vice-President of the North Carolina State Bar in 1953.

Dean Weathers was a Visiting Professor of Law at the University of North Carolina during the summer of 1954. In 1969, Campbell College conferred the LL.D. degree on him.

In addition to his active participation in professional activities, Dean Weathers has been a member of the Board of Directors of the Governor Morehead School (State School for the Blind and Deaf located in Raleigh) for thirty-three years and was chairman from 1958-1970. He considers this work his main hobby. From 1963-1964, he was President of the Winston-Salem Rotary Club.

Dean Weathers and his gracious wife, the former Mary Parks Bell, are active members of First Baptist Church in Winston-Salem where Dean Weathers is on the Board of Deacons. Dean Weathers has four children. Carroll W. Weathers, Jr., a Wake Forest Law School alumnus, practices law in Hickory. A married daughter, Sue Sanderlin, lives in Raleigh. Jane Weathers teaches school in Shelby, North Carolina, and Katherine is a junior at Wake Forest.

Dean Weathers epitomizes the ethical aspect of the legal profession; his genuine interest in the professional future of Wake Forest law students is evidenced in his concern that they "make not only a good living but a good life". Students are respected by him as individual ladies and gentlemen and these students in turn respect Dean Weathers as the truly great man he is.



Prof. James E. Sizemore

Wake Forest Law School is privileged to include James E. Sizemore on the faculty. In 1952, Professor Sizemore joined the Hamrick and Jones law firm in Rutherfordton, North Carolina, after earning his LL.B. degree and was in private practice until 1953, when responding to a request from Dean Weathers, he became an Assistant Professor of Law on the faculty. From 1955-1960 he was an Associate Professor of Law and since 1960 has been a Professor of Law. Professor Sizemore earned an LL.M. degree in 1966 from New York University where he was a Ford Fellow.

Since becoming a faculty member, James Sizemore has distinguished himself and the law school with an impressive record of professional activities and publications.

From 1956-1958 Professor Sizemore served on the North Carolina General Statutes Commission, and from 1958-1969 was a member of the drafting committee for the new North Carolina Rules of Civil Procedure. He participated in six North Carolina Bar Association Institutes held in six cities across the state, has held seminars in judicial districts across the state, and conducted a seminar in Asheville for superior court judges explaining the new rules. Professor Sizemore was a lecturer on medical jurisprudence at Bowman Gray Medical School from 1958-1963. An active member of the Forsyth County Bar Association and the North Carolina Bar Association, Professor Sizemore served as Vice President of the

North Carolina Bar Association from 1969-1970. He presently is serving as draftsman for the Committee on Pattern Jury Instructions, a committee which is composed of Superior Court Judges. Since 1953 he has served as faculty adviser for the Phi Alpha Delta Law Fraternity. Professor Sizemore has had one article published in the *Wake Forest Intramural Law Review,* entitled "The Scope and Philosophy of the New Rules" in Volume 5 and one published in the *Wake Forest Law Review* on "Character Evidence in Criminal Cases in North Carolina" in Volume 7, an article on the new rules in the North Carolina Bar Association's publication, a book review in Volume 15 of *Journal of Legal Education,* and authored Comments to some of the new Rules of Civil Procedure in Volume 1A of the *N.C. General Statutes* published by the Michie Company.

Professor Sizemore and his lovely wife, the former Amilee Caldwell, have one son, Tom, a student at Milligan College in Tennessee. Sundays also find Professor Sizemore teaching—this time—the Fellowship Class at Reynolda Presbyterian Church.

Jim Sizemore's natural talents include a musical inclination with a country flair which has earned him quite a reputation as a guitar and dobro picker.

Dr. James A. Webster

James A. Webster Jr. had been an alumnus for only three months when he joined the faculty in September of 1951. At the age of twenty-four he became the youngest man ever to teach law at Wake Forest. After teaching for one year, he left to practice law in Leaksville, North Carolina. Upon Professor Timberlake's retirement, Professor Webster rejoined the faculty in 1954 as an Assistant Professor of Law. From 1955-1960 he served as Associate Professor of Law and since 1960 has been a Professor of Law.

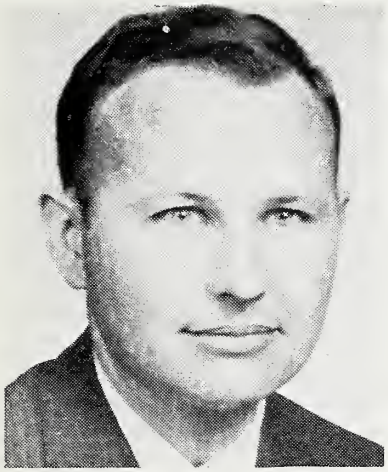
In 1967 he earned his S.J.D. degree from Harvard Law School, where he was a Ford Fellow. His doctoral dissertation was written on "Improving the Marketability of Real Estate in North Carolina."

Dr. Webster has brought recognition to the law school through his active participation in professional activities and contributions to legal publications. He has served as a member of the North Carolina General Statutes Commission, as a consultant to the Commissioner of the North Carolina Revenue Department, as a consultant to the North Carolina Commissioner of Insurance, and as a consultant to the North Carolina Attorney General. In 1956 he rewrote the sales tax act in force in North Carolina and in 1967 he rewrote the North Carolina Department of Insurance Regulations. His summers are spent in legal research, most recently in Raleigh working with the Attorney General. His legal writing includes law review articles and drafting the North Carolina Insurance Department Regulations, published in the *National Insurance Law Service.*

Dr. and Mrs. Webster, the former Alice Jowdy of Danbury, Connecticut, have three children, Dean, Gloria, and Marc, and are members of First Baptist Church in Winston-Salem.

Dr. Webster admits to being an "avid if inept" golfer, time and weather permitting; a second hobby not as enthusiastically regarded is gardening, and the hobby which he admits occupies the greatest portion of his time is "iconoclastic curmudgeoning",

which has added to his renown as "the Prophet JAW". These hobbies as well as the property courses he teaches have earned him the fond reputation of being a "man for all seisins".



Prof. Leon H. Corbett, Jr.

In the fall of 1968, Leon H. Corbett, Jr. joined the faculty of the law school in the dual capacities of Assistant Professor of Law and Assistant to the Dean. Professor Corbett has been an Associate Professor since 1969 and since the fall of 1970 has served as Assistant Dean.

After his graduation from Wake Forest Law School in 1961, Professor Corbett was commissioned a First Lieutenant and served in the Army Military Police Corps from October, 1961 until February, 1962 when as a Captain, he began a tour of duty with the Judge Advocate General's Corps of the United States Army.

In 1964, after completion of his military duty, he joined his father in private law practice in Burgaw, North Carolina, where he remained for one year before becoming Revisor of Statutes and ex-officio Secretary of the General Statutes Commission, a position he held from 1965-1967 on the staff of the Attorney General of North Carolina. Professor Corbett was in private practice in Wallace, North Carolina, from 1967-1968 when he returned to Wake Forest Law School.

Painstaking diligence characterizes Professor Corbett's approach to his professorial and administrative duties. In addition to his other duties, Professor Corbett conducts the moot court trial program held each spring which gives third year students the opportunity for practical application in trial work skills. He has had an article entitled "Parties and Joinder" published in Volume 5 of the *Wake Forest Intramural Law Review*.

Professor Corbett and his charming wife, the former Rachel Stevens, have one daughter Lauren, who is five years old. The Corbetts are active members of Reynolda Presbyterian Church in Winston-Salem where Professor Corbett is a member of the Board of Deacons. Although admitting that he does not have much time to enjoy hobbies, he lists quail hunting as a favorite and candidly, with a twinkle in his eye, confesses that the "birds do not suffer much damage as a result of this endeavor".

Professor Corbett describes himself as "well-entrenched in the Wake Forest tradition" since his father is an alumnus of the law school, his brother, Robert, is presently a first year law student at Wake Forest, and his wife is an alumna of the undergraduate school.

CLASS NOTES

1904

Egbert Lawrence Davis did not practice law but served as President and Chairman of the Board of several businesses. He has served as Chairman of the Board of Directors of Piedmont Aviation which he helped to organize and has been President of Security Life and Trust Co. from 1934 to the present. His home is Sunny-Knoll in Winston-Salem, N. C.

1912

Arthur Alexander Bunn has been Mayor of Henderson, Attorney for the City of Henderson, and Director of the Southern National Bank of Henderson.

1914

Gordon B. Rowland of Raeford, N. C. retired from general law practice in 1965 and is now devoting his time to personal investments. In 1952 he was appointed Solicitor of Hoke County Recorder's Court by the Board of Hoke County Commissioners, and served until March, 1963.

1921

Isham B. Hudson retired as a public school educator on June 30, 1963, after having served as superintendant of schools at Andrews, N. C. for 16 years and of Onslow County Schools for 12 years.

1922

Edwin F. Holman never practiced law but was one of the editors of The Associated Press for 34 years, from 1929 until 1963. He lives in Atlanta, Georgia.

1924

Benjamin Smith Beach of Orlando, Florida, entered the ministry soon after receiving his law degree. He served as chaplain in India during World War II, and worked with the Veterans Administration until his retirement in 1962.

1925

Hugh Bland Copeland retired on Dec. 31, 1969, as Vice-President of Wachovia Bank and Trust Co. at Ahoskie, N. C.

1927

Fred Henderson Hasty was engaged in a general law practice for 36 years and has served as Judge of Superior Court in Charlotte, N. C. since 1966.

1928

Buford T. Henderson of Winston-Salem, N. C., is District Judge for the 21st Judicial District of N. C.

1930

George D. Taylor is a judge for the Criminal District Court of Jefferson County, Texas, and lives in Beaumont, Texas.

1931

Raymond Kyle Hayes of Wilkesboro, N. C. is on the Board of Governors of the N. C. Bar Association, his term expiring in 1973.

Edwin M. Stanley is a United States District Judge for the Middle District of N. C.

1933

Harvey A. Lupton has served as President of the N. C. Conference of Superior Court Solicitors and is President-Elect of the N. C. Conference of Superior Court Judges. He is currently a Superior Court Judge for Forsyth County.

1935

Mrs. Sarah Greason Duerson of Falls Church, Va. is an attorney for the Federal Reserve Board.

J. Allie Hayes is serving his sixth consecutive four-year term as solicitor of the 23rd Solicitorial District in North Wilkesboro, N. C.

1936

Joseph D. Blythe lives in Harrellsville, N. C. and is a District Judge for the Sixth District.

1937

Robert Bruce White, Jr. of Durham, N. C. is a Deputy Attorney General in the N. C. Department of Justice.

A. Pilston Godwin, Jr. was President of the N. C. Bar Association from 1965-1966 and has been a Superior Court Judge since 1967.

1939

John E. Lawrence is minister of Forest Hills Baptist Church in Raleigh, N. C. He has been President of the N. C. Baptist State Convention from 1969 and will serve as President through 1971.

Ashley T. McCarter is Vice President of the Business Insurance Division of Nationwide Insurance Company, and his legal services involve both State and Federal Legislation. Mr. McCarter lives in Worthington, Ohio.

1940

Wade H. Bostick received a Distinguished Service Award jointly from the U. S. Dept. of Labor and the Office of Economic Oppor-

tunity in 1965. The Georgia Dept. of Labor presented him a Distinguished Service Award, the only such award ever made to a Federal "Bureaucrat" by the State of Georgia. He lives in Decatur, Georgia.

1941

Willis Sidney Turner of Murfreesboro, Tenn., is Assistant Director of the Tennessee Alcoholic Beverage Commission.

Samuel Jones Gantt, Jr. is Facilities Manager and Supervisor for West Campus, Duke University, in Durham, N. C.

1946

Forrest H. Shuford, II is Commissioner for the N. C. Industrial Commission in Raleigh.

1947

Warren H. Pritchard has been Mitchell County Attorney from 1957-1971, and Attorney for the Town of Spruce Pine from 1953-1971.

1948

Everette C. Carnes has served as District Judge for the 29th District of N. C. since August, 1970.

1949

Horace Robinson Kornegay, Jr. was elected President and Executive Director of The Tobacco Institute, Inc. in June, 1970. He served as U. S. Congressman for the Sixth Congressional District of N. C. from Jan. 1961 until Jan. 1969.

Glenn W. Brown, a partner in the firm of Morgan, Ward, and Brown in Waynesville, N. C. is a member of the Criminal Code Commission of N. C., a member of the Bar Candidate Committee and of the N. C. State Bar Council of the 30th Judicial District.

1950

Samuel Behrends, Jr. is living in Raleigh, N. C., where as Vice-President of Carolina Power & Light Company, he is specializing in public utility regulatory law.

Foy Clark of Mount Airy, N. C. is a 17th Judicial District Court Judge.

1951

George H. Johnson, Jr. entered the private practice of law on Oct. 30, 1970, with Frank D. Ferguson, Jr. of Waynesville, N. C. Prior to this time he was Claims Manager of Hartford Fire Insurance Group, and from 1960-1970 was Vice-President and Trust Officer at Northwestern Bank.

Richard S. Clark of Monroe, N. C. is presently serving as a member of the N. C. House of Representatives.

Russel J. Lanier is living in Beulaville, N. C. and serving as a District Court Judge for the 4th Judicial District.

1952

Norman Adrian Wiggins is President of Campbell College in Buies Creek, N. C.
James F. Bullock is a Deputy Attorney General for the N. C. Department of Justice and lives in Fuquay-Varina, N. C.

1953

William M. Nicholson, Jr. is employed as Manager for the Claims Department of The Travelers Insurance Company in Louisville, Kentucky. He is in the process of transferring to Atlanta.

Bert M. Montague, residing in Raleigh, N. C., is Director of the Administrative Office of the Courts for the State of N. C.

1954

Alvin A. Thomas is Assistant Solicitor for the Superior Court of Forsyth County.
Kennedy W. Ward of New Bern is President of the Craven County Bar Association for the 1970-1971 term.

1956

Gilbert Henry Burnett was sworn in as District Court Judge on Dec. 2, 1968, after being elected. He was appointed as Chief District Judge for the Fifth District of N. C. in February, 1969.

1957

Howard Fabing Twiggs has been a member of the N. C. House of Representatives from 1967 to the present.

1958

Robert Wayne Fisher served as First District Court Prosecutor for Buncombe County until Jan. 1, 1971, when he was appointed Assistant Solicitor of the 28th Solicitorial District.

1960

James N. Stephens is the Assistant Regional Attorney in the Office of General Counsel in the U. S. Department of Health, Education, and Welfare in Atlanta, Georgia. He specializes in Social Security and Public Assistance Programs.

Joseph Charles McDarris, a sole practitioner in Waynesville, N. C., does the majority of his work in the fields of criminal law and personal injury.

John Henderson Hasty of Charlotte, N. C. is Calendar Committeeman for the 26th Judicial District, 1969-1971.

1961

Henry A. Mitchell, Jr. was appointed Deputy General Counsel of the Export-Import Bank in Jan. 1970. He resides at Lake Barcroft, Va. but plans to return to law practice in N. C. in the future. He was Magister of Phi Delta Phi, Ruffin Inn, in 1961.

William E. Crosswhite of Statesville, N. C., is Iredell County Bar Association President for the year 1970-1971.

1962

Charles B. Deane, Jr. of Rockingham, N. C. was elected to the N. C. State Senate in November, 1970, and is serving in the 1971 General Assembly. As of Jan. 1971, he is serving on the General Board of the N. C. Baptist State Convention.

Clinton Eugene McElroy recently left Pilot Title Insurance Company in Greensboro to become President of the North Carolina Title Company. He plans to move his family to Winston-Salem soon.

1963

Ralph A. Walker of Greensboro has been Assistant County Attorney of Guilford Co. since 1969. His legal work involves rendering services in county government, taxation, civil litigation, and real estate.

Fred G. Morrison, Jr. has been Legal Counsel to Governor Robert Scott since Feb. 1, 1969. He is also presently Legal Counsel to the N. C. Jaycees.

1964

Sidney Smith Eagles, Jr. of Raleigh is a Deputy Attorney General. He is President of Wake County Chapter of the Wake Forest Alumni Association, Vice-President and member of the Board of Raleigh Jaycees, and Director of the Justice Foundation.

Douglas P. Connor is a permanent member of the U. S. Court of Appeals for the 4th Circuit Judicial Conference. He lives in Mount Olive and formed the partnership of Connor and Vickory on Oct. 1, 1970.

Arnold Leroy Young has a general law practice in Sparta. He is President of the 23rd Judicial District Bar Association and President of the Sparta Lions Club for the 1970-1971 term.

Jerry C. Wilson has an active trial practice in High Point. He is President of Carolina Credit Card Association and Vice-President and General Counsel of Ace Records, Inc.

1965

Larry Grant Ford of Raleigh is General Counsel for the N. C. League of Municipalities.

Ellis Lewis Aycock is President of the Wake Forest Alumni club of New Hanover, Pender, and Brunswick Counties for the 1970-71 year.

Terry Richard Hutchins of Pembroke, N. C. has been Director of Institutional Research and Planning for Pembroke State University since 1966. He is Guest Scholar at Woodrow Wilson International Center for Scholars at the Smithsonian Institute 1970-71.

1966

Maurice W. Horne has been Assistant Commission Attorney for the N. C. Utilities Commission since July, 1970.

Peter James Hunter, Jr. of Roanoke, Va. received his LL.M. degree from Harvard Law School in 1967.

E. C. (Jene) Thompson, III is a sole practitioner in Warsaw, N. C. He is Vice-President of the Duplin County Bar Association.

1967

H. W. Zimmerman, Jr. is Solicitor for the 22nd Solicitorial District in Lexington for the 1970-1974 term.

J. Thomas Boshore is Executive Assistant with Midland Mutual Life Insurance Company of Columbus, Ohio. He was listed in the 1970 edition of **Outstanding Young Men of America.**

Corlos W. Murray, Jr. is the current N. C. chairman for the American Bar Association's Committee on Law and the Clergy.

1968

Chorles R. Young of Hickory, N. C. is Legal Counsel for the Hickory Jaycees, 1969-1971. He is the father of twins, a boy and a girl, Bert and Heather, born on May 10, 1969.

Woyne Hompton Foushee lives in Winston-Salem, N. C. and is counsel for McLean Trucking Co. He is a member of the Board of Trustees of the Legal Aid Society of Forsyth County.

Lodson Frederick Hort is a member of the N. C. Attorney General's Office in Asheville and legal advisor to the Western District S.B.I.

1969

R. Brodford Leggett, Jr. is legal assistant to Judge Eugene A. Gordon, U. S. District Judge for the Middle District of N. C. in Winston-Salem.

Zoro Joseph Guice, Jr. is a law clerk to Federal Judge Woodrow W. Jones in Rutherfordton, Western District of N. C.

Thomas S. Thornton is in Greensboro working as a law clerk for U. S. District Judge Edwin M. Stanley.

1970

J. Somuel Willioms of Siler City, N. C. is a partner in the law firm of Moody, Moody, and Williams.

Edgor B. Gregory is an attorney with the Fifth Coast Guard District Legal Office in Portsmouth, Virginia.

Leslie Benton Farmer from High Point, N. C. is presently a law clerk on the staff of the Judge Advocate at Fort Jackson, S. C.

Robert Odom, currently working as a Research Assistant with the N. C. Court of Appeals in Raleigh, will be a partner in the law firm of Coble, Morton, and Grigg in Albemarle, N. C. as of September 1, 1971.

Mork Ellis Galloway is living in Raleigh, N. C. and serving as a Research Assistant to Justice Branch of the N. C. Supreme Court. In the summer of 1971, Mark will become an associate in the firm of Hollowell, Stott, and Hollowell in Gastonia, N. C.

Molcolm J. Howard is living in Charlottesville, Virginia and serving with the Judge Advocate General's Corps of the U. S. Army.

Michael J. Lewis is an associate member of the law firm of White, Crumpler, and Pfefferkorn in Winston-Salem, N. C.

Robert Keller Leonard is Assistant County Attorney for Forsyth County.

Horry H. Clendenin, III is living in Greensboro and practicing law as an associate member of the Smith, Moore, Smith, Schell and Hunter Law Firm.

Corl Edward Bell is living in Mount Airy, N. C. and is an Associate in the Gardner and Gardner Law Firm.

Warren (Butch) Pate is serving in the Army and stationed in Lake City, New Mexico.

Jake C. Helder is in the JAG Corps, U. S. Army stationed at Indianapolis, Indiana.

Tronsition

Born to:

Mr. ond Mrs. Robert Howord Lacey of Newland, N. C., a son, Robert H. Lacey, Jr., on December 7, 1970. Mr. Lacey (Class of 1949) is currently the County Attorney for Avery County, N. C.

Henry L. Kitchin (Class of 1963) and wife of Rockingham, N. C., their first child, a son, Henry Little Kitchin, Jr. on February 6, 1971.

Paul Williams (Class of 1963) and wife Judy B. Williams of Charlotte, N. C., a son, Paul Jonathan Williams, Jr. on September 9, 1970.

Grover A. Gore (Class of 1963) and wife of Southport, N. C., a son, Grover A. Gore, II, on October 17, 1970.

Joseph Edward Johnson (Class of 1966) and wife of Raleigh, N. C., their third child, a daughter, Susan Briles, on January 24, 1971.

Robert Alexander Freeman, III (Class of 1966) and wife of Asheville, N. C., a son, Douglas Alexander, on February 6, 1971. Mr. Freeman is employed by the U. S. Treasury Department as an Estate Tax Attorney with the Internal Revenue Service.

Joe Earl Biesecker (Class of 1968) and wife of Lexington, N. C., a son, Eric Hamilton, on December 16, 1970.

William Kelly Johnson (Class of 1968) and wife Sue of Newland, N. C., a son, James Patrick, on October 12, 1970.

Charles W. Kafer (Class of 1969) and wife of New Bern, N. C., a daughter, Alison Elizabeth on October 29, 1970.

Sandt Nelson Weeks (Class of 1969) and wife of Baltimore, Maryland, a daughter, Amy Elizabeth, on November 1, 1970.

Harry H. Clendenin, III (Class of 1970) and wife of Greensboro, N. C., a daughter, Katharine, on February 7, 1971.

Married:

James Lee Graham (Class of 1967) from Yadkinville, N. C. to Una Grey Combs of Cycle, N. C. on June 14, 1970.

Thomas W. H. Alexander (Class of 1968) of Raleigh, N. C. to Rebecca Griffin on April 18, 1970. Mr. Alexander is Assistant Solicitor of the 10th Solicitorial District.

General:

Retired—James Nella Martin (Class of 1943) of Clinton, N. C. from the U .S. Navy on September 1, 1970 in the rank of Captain, Judge Advocate General's Corps, with over 26 years of service.

Released—M. Daniel McGinn (Class of 1967) from active duty in the Navy Judge Advocate General's Corps in July, 1970 and now resides in Greensboro, N. C.

Installed—Charles B. Winberry (Class of 1967) as President of the N. C. Young Democrats Clubs in Feb. 1971. Mr. Winberry practices in Rocky Mount, N. C.

Editar's Note:

Special appreciatian is extended ta Prof. Richard G. Bell for technical assistance ta the Alumni Section.

Due ta the averwhelming respanse from the alumni, we were unable to include all thase who answered. Information furnished by thase nat included will be used in future issues.

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